

ITEL

October 5, 1987

Istel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

Hon. Noreta R. McGee
Secretary

Interstate Commerce Commission
Washington, DC 20423

Date 10/9/87
Fee \$ 20.00

RECORDATION NO. 9703 Filed 1426

CC Washington, D. C.

OCT 9 1987 - 10 00 AM

INTERSTATE COMMERCE COMMISSION

Re: Amendment No. 5 dated October 2, 1987, to the Lease Agreement dated May 5, 1978, between Istel Corporation, Rail Division, and Atlanta and Saint Andrews Bay Railway Company

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$20 recordation fee.

Please record this Amendment under the Lease Agreement dated May 5, 1978, between Istel Corporation, Rail Division, and Atlanta and Saint Andrews Bay Railway Company, which was filed with the ICC on September 22, 1978, under Recordation No. 9703. Please cross-index this Amendment to the Equipment Trust Agreement dated January 1, 1982, between Istel Corporation and First Security Bank of Utah, N.A., which was filed with the ICC on September 23, 1983, under Recordation No. 14165.

The parties to the aforementioned instrument are listed below:

Istel Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Atlanta and Saint Andrews Bay Railway Company (Lessee)
514 E. Main Street
P.O. Box 729
Dothan, Alabama 36302

This Amendment adds to the Lease Agreement fifty (50) 50', 70-ton, Plate C boxcars bearing reporting marks ASAB 7464-7486 and ASAB 7487-7513.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

ASSIGNED TO FIRST SECURITY BANK
OF UTAH, N.A., TRUSTEE, UNDER
A LEASE ASSIGNMENT.

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN
FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER
FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL
RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

09/02/86

RECORDATION NO. 9703 l
Filed 1420

OCT 9 1987 -10 20 AM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 5

THIS AMENDMENT NO. 5 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of May 5, 1978, as amended, between Itel Corporation, Rail Division and ATLANTA AND SAINT ANDREWS BAY RAILWAY COMPANY ("Lessee") is made this 2nd day of October 1987, by and between ITEL RAIL CORPORATION, as successor in interest to Itel Corporation, Rail Division ("Lessor") and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to the Agreement, pursuant to which five hundred seventy-one (571) boxcars (together with the boxcars described on Equipment Schedule No. 6 attached hereto, the "Car(s)") have been leased by Lessor to Lessee.
- B. Pursuant to the termination letters dated July 25, 1986 and July 28, 1986, the Agreement was terminated with respect to forty-three (43) Cars bearing reporting marks from within the series ASAB 8100-8201.
- C. Lessor and Lessee mutually desire to add fifty (50) Cars to the Agreement.

NOW, THEREFORE, the parties hereto agree to amend the agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in the Amendment.
2. Equipment Schedule No. 3.B. shall be deleted in its entirety from the Agreement and shall be replaced by Equipment Schedule No. 3.C. attached hereto.
3. Equipment Schedule No. 6, which references fifty (50) boxcars bearing the reporting marks ASAB 7464-7513, is hereby added to and made part of the Agreement.
4. The words "With respect to the Boxcars on Equipment Schedule No. 4.A. only" in Section 3 of Amendment No. 2 dated May 24, 1984, to the Agreement ("Amendment No. 2") shall be deleted in their entirety and replaced by the words "With respect to the Cars on Equipment Schedules No. 4.A., No. 5 and No. 6 only", and the words "Boxcar(s)" and "Equipment Schedule No. 4.A." in Subsection 2.A. and Subsection 2.B. of the Agreement as amended by Amendment No. 2 shall be deleted and replaced by the words "Car(s)" and "Equipment Schedules No. 4.A., No. 5 and No. 6", respectively, each time they appear.
5. Section 3 of the Agreement, as amended by Amendment No. 2, shall apply likewise to the Cars on Equipment Schedule No. 6, except that, with

respect to the Cars on Equipment Schedule No. 6, the second sentence of Subsection 3.A., as amended by Amendment No. 2, shall be deleted in its entirety and replaced by: "Lessor shall, at Lessor's initial expense and subject to the recovery of such expense pursuant to Subsection 6.A.(ii) of the Agreement, remark each Car with the railroad markings of Lessee in compliance with all applicable regulations." Section 3 of the Agreement as amended by Amendment No. 2 shall be further modified by deleting the words "Boxcar" and "Boxcars" each time they appear and replacing such words with "Car" and "Cars" respectively.

6. Subsection 6.A. of the Agreement, as amended by Amendment No. 2, shall apply to the Cars on Equipment Schedules No. 4, No. 5 and No. 6, except that with respect to the Cars on Equipment Schedule No. 6 only, such Subsection 6.A. shall be modified as follows:

- a. The words "Boxcar" and "Boxcars" shall be deleted and replaced each time they appear in such Subsection 6.A. by the words "Car" and "Cars", respectively.
- b. The words "earned and due from other railroad companies for the use or handling of the Boxcars" in Subsection 6.A.(i)(a) of such Subsection 6.A. shall be deleted and replaced by the words "earned and due with respect to the use or handling of the Cars while such Cars are on railroad lines other than the lines owned and operated by Lessee as of August 1, 1987."
- c. A new sentence shall be added to such Subsection 6.A.(i)(a): "Revenues shall be calculated at the hourly and mileage car hire rates prescribed for excluded boxcars under the ICC's decision in ICC Ex Parte No. 346, Sub-No. 19 served September 12, 1986, set forth in the Appendix to such decision in paragraph (c)(3) of 49 C.F.R. 1039.14 ('Revenue Rates')."
- d. Subsection 6.A.(i)(c) of such Subsection 6.A. shall be deleted in its entirety and replaced by the following:

"(c) The 'Base Rental' is defined as

Car per calendar quarter. Such amount represents the Revenues which the Cars would have earned in the aggregate for such calendar quarter at a Utilization Rate of . The Base Rental for any Car which is not subject to the Agreement for an entire calendar quarter shall be prorated at

"

- e. The second sentence of Subsection 6.A.(ii) of such Subsection 6.A. shall be deleted and replaced by: "Each Car delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 6.A.(iii) upon the Initial Loading of such Car, provided,

f. A new Subsection 6.A.(v) shall be added to such Subsection 6.A.:

"(v) In the event that Lessor shall receive or earn for the use of any Car, revenues calculated at hourly or mileage car hire rates that are lower in amount than the Revenue Rates, as a result of any action or inaction by Lessee, Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Car would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Car."

7. With respect to the Cars on Equipment Schedule No. 6 only, the words "In the event the utilization rate in any calendar quarter is less than an amount equal to ' in Subsection 6.C. of the Agreement shall be deleted and replaced by: "If, with respect to any calendar quarter, Revenues received by Lessor are less than the Base Rental".

8. With respect to the Cars on Equipment Schedule No. 6 only, a new Subsection 6.F. shall be added to the Agreement:

"F. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee."

9. New Subsections 6.G., 6.H. and 6.I. shall be added to the Agreement:

"G. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ('DV') for such Car, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ('Damage Date'). If Lessee fails to notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.

H. Lessee shall not enter into any agreement with any other party with respect to the Cars ('Third Party Agreement(s)') without Lessor's prior written approval.

I. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 6."

10. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.

11. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

Name: _____

Title: _____

Date: _____

[Signature]

President

10/2/87

ATLANTA AND SAINT ANDREWS BAY RAILWAY
COMPANY

Name: _____

Title: _____

Date: _____


[Signature]

General Manager

9/24/87

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 2nd day of October, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public


STATE OF Illinois)
) ss:
COUNTY OF Cook)

On this 24th day of September, 1987, before me personally appeared Lester J. Federer, to me personally known, who being by me duly sworn says that such person is Vice President of Atlanta and Saint Andrews Bay Railway Company, that the foregoing Amendment No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Evelyn C. Tiberi
Notary Public 6/14/90

EQUIPMENT SCHEDULE NO. 3.C.

Itel Rail Corporation hereby leases the following Cars to Atlanta and Saint Andrews Bay Railway Company subject to the terms and conditions of that certain Lease Agreement dated as of May 5, 1978, as amended.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XM	50' general purpose boxcar, Plate C, with end-of-car cushioning and nailable steel floors	ASAB 7200-	50'6"	9'6"	11'1"	10'	97
		7230;					
		ASAB 7232-					
		7259;					
		ASAB 7261-					
		7282					
		ASAB 7284-					
XM	60' general purpose boxcar, Plate E, with end-of-car cushioning and nailable steel floors	7299	60'10"	9'6"	11'5"	10'	7
		ASAB 8151-					
		8153;					
		8164;					
		8187;					
		8199;					
		8291					

This Equipment Schedule replaces Equipment Schedule No. 3.B. executed as of August 26, 1986.

ITEL RAIL CORPORATION

ATLANTA AND SAINT ANDREWS BAY
RAILWAY COMPANY

By: *DP Hayes*

By: *Van Houtst*

Title: *President*

Title: *Van Houtst*

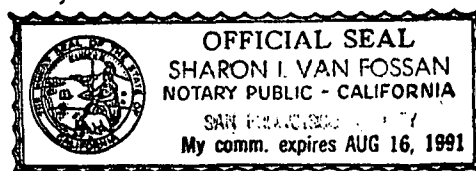
Date: *10/2/87*

Date: *9/24/88*

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 2nd day of October, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedules No. 3.C. and No. 6 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF Illinois)
) ss:
COUNTY OF Cook)

On this 24th day of September, 1987, before me personally appeared Leslie J. Federer, to me personally known, who being by me duly sworn says that such person is Vice President of Atlanta and Saint Andrews Bay Railway Company, that the foregoing Equipment Schedules No. 3.C. and No. 6 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of said corporation.

Leslie J. Federer
Notary Public 6/14/90